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August 17, 2006

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**VIA HAND DELIVERY**

Federal Election Commission  
Office of General Counsel  
999 E Street, NW  
Washington, DC 20463

AOR 2006-26

Re: Advisory Opinion Request

Dear Commissioners:

On behalf of our client, Texans for Henry Bonilla ("Committee"), we respectfully request an advisory opinion from the Federal Election Committee ("FEC" or "Commission") pursuant to 2 U.S.C. 437f, regarding the contribution limits applicable to the special general election that a three-judge District Court has called for November 7, 2006, in the 23<sup>rd</sup> Congressional District in Texas. Although outside of the 60-day pre-election period during which expedition is mandatory, we request that the FEC consider this request expeditiously for benefit of our client and for the benefit of all candidates running in the Texas congressional districts affected by the recent federal court order on redistricting and elections.

In sum, the Committee requests confirmation that it may, pursuant to FEC Advisory Opinion 1996-37, accept contributions for a judicially-called special general election on November 7, 2006, without regard to any contributions already accepted for the regular general election that had been scheduled for the same date but which now has been cancelled.

**FACTS**

**A. Background on the Committee**

The Committee is the principal campaign committee of Rep. Henry Bonilla. Rep. Bonilla represents the 23<sup>rd</sup> Congressional District of Texas and ran unopposed in the Republican primary held on March 7, 2006.

**B. Redistricting Litigation**

On June 28, 2006, the Supreme Court of the United States upheld most of the mid-decade redistricting activity undertaken by the Texas legislature in 2003. The Court found, however, certain problems with the boundaries of Congressional District 23

Federal Election Commission  
August 17, 2006  
Page 2

and remanded a decision about the precise boundaries to the District Court. *League of United Latin American Citizens v. Perry*, 126 S.Ct. 2594 (2006).

A special three-judge panel for the U.S. District Court for the Eastern District of Texas ordered on August 4, 2006, new boundaries for the 15<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 25<sup>th</sup>, and 28<sup>th</sup> Congressional Districts in Texas. *League of United Latin American Citizens v. Perry*, No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006) (attached hereto at Tab A (without Appendices)).<sup>1</sup> The Court also set special open elections in each of these districts for November 7, 2006, with runoffs to be scheduled, if necessary, by the Texas Secretary of State.

### **QUESTION PRESENTED**

Are the contribution limits for the newly-scheduled November 7, 2006, special general election separate and distinct from the contribution limits that had been applicable to the now-cancelled November 7, 2006, regular general election in the 23<sup>rd</sup> Texas Congressional District?

### **DISCUSSION**

Section 315 of the Federal Election Campaign Act of 1971, as amended ("FECA") establishes the contribution limits applicable to candidate committees. These limits are set "with respect to any election for Federal office." 2 U.S.C. § 441a(a)(1)(A) & (a)(2)(A). In the FECA, the term "election" means as follows:

- (A) a general, special, primary, or runoff election;
- (B) a convention or caucus of a political party which has authority to nominate a candidate;
- (C) a primary election held for the selection of delegates to a national nominating convention of a political party; and
- (D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

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<sup>1</sup> The District Court's Opinion and the Appendices to its Order are available at <http://www.txed.uscourts.gov/session/recent2.html>.

Federal Election Commission

August 17, 2006

Page 3

*Id.* § 431(1).

In FEC Advisory Opinion 1996-37, the Commission faced a situation where a three-judge panel for the U.S. District Court for the Southern District of Texas had redrawn the boundaries of thirteen congressional districts. The Court also had set special elections in those districts for November 5, 1996, which, prior to the court order, had been the date for the regular general election. The newly set special general elections were “open” elections in that the results of the prior primaries and runoffs did not affect the ability of individuals to participate as candidates in the special elections.

Based upon these facts, the Commission ruled that the court-ordered special general election was “a separate election with separate contribution limits from those originally in effect for the regular general election.” To support this conclusion, the Commission found that the previous primaries and runoffs in those Congressional Districts had been held under color of state law and that the court order establishing the new boundaries and setting the new elections had nullified the results from the primaries and runoffs. *See also* FEC Advisory Opinion 1996-36 (separate opinion addressing the same and additional questions asked by different candidates in similarly affected Congressional Districts).

The present situation faced by the Committee and Representative Bonilla in the 23<sup>rd</sup> Congressional District is materially indistinguishable from the facts in FEC Advisory Opinion 1996-37 and requires separate contribution limits. Here, a federal district court has altered the boundaries of five Texas congressional districts and has order special elections in those districts. The special general elections set for November 7, 2006, are open and are not limited to the primary and runoff winners from earlier in 2006. Instead, the special general is open to any candidate who qualifies for the ballot. The open format of the special general elections nullifies the results of the primaries and runoffs held in the Spring—just as the Commission held in 1996.

Moreover, although the Bipartisan Campaign Reform Act of 2002 (“BCRA”) increased contribution limits applicable to individuals and indexed such limits to inflation, BCRA did not change the definition of “election” or the application of the contribution limits to elections. Subsequent to 1996, Congress has not changed any of the laws material to the conclusion reached by the Commission in FEC Advisory Opinion 1996-37.

Federal Election Commission

August 17, 2006

Page 4

**CONCLUSION**

The contribution limits for the November 7, 2006, special general election are separate and distinct from the 2006 primary and general election limits.

Our client respectfully requests an advisory opinion confirming the above.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Baran", with a long horizontal flourish extending to the right.

Jan Witold Baran

D. Mark Renaud

cc: Chairman Michael E. Toner  
Vice Chairman Robert D. Lenhard  
Commissioner David M. Mason  
Commissioner Hans A. von Spakovsky  
Commissioner Steven T. Walther  
Commissioner Ellen L. Weintraub

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS,  
MARSHALL DIVISION

LEAGUE OF UNITED LATIN	§	
AMERICAN CITIZENS, ET. AL.	§	
	§	CIVIL NO. 2:03-CV-354
vs.	§	CONSOLIDATED
	§	
RICK PERRY,	§	
GOVERNOR OF TEXAS, ET. AL.	§	

ORDER REGARDING 2006 SPECIAL ELECTIONS FOR REDRAWN CONGRESSIONAL  
VOTING DISTRICTS

Pursuant to the Supreme Court's remand order of June 28, 2006 and this Court's opinion of August 4, 2006, this Court adopts Plan 1438C, which redraws congressional voting districts 15, 21, 23, 25, and 28. A map showing the redrawn districts in Plan 1438C is attached to this Order as Appendix A. The boundaries of those districts are amended as described in Appendix B. The statistical package for Plan 1438C is attached as Appendix C.

For the redrawn congressional districts, the Court ORDERS that special elections for the office of United States representative for the 110th Congress be held under section 204.021 of the Texas Election Code in conjunction with the November 7, 2006 general election. The following schedule governs:

August 25, 2006: deadline for open filing for seats in Congress and for all congressional candidates, including write-in candidates, to declare their candidacy and for independent candidates to file petitions.

September 6, 2006: deadline for the Secretary of State to certify the names of candidates for the ballot for the November 2006 special elections in the redrawn districts.

November 7, 2006: the special election for the redrawn districts will be held in conjunction with the general election.

The Secretary of State will set a date to canvass the special election results and order a runoff election in any district in which no candidate receives over 50% of the votes.

The Secretary of State will set a date for the required runoff elections. All runoff elections must occur on the same date.

Unless otherwise specified, the applicable provisions of the Texas Election Code, the Help America Vote Act, and any other applicable state and federal election laws will govern the regular and special elections.

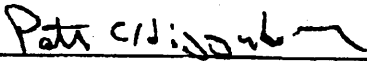
The Secretary of State is to instruct election officials in the redrawn congressional districts to prepare the ballots in a way that will minimize voter confusion and allow all properly cast votes to be counted, recognizing that different counties use different machines to record votes and that there may be more than one candidate from a single party in a district.


The boundaries of congressional districts 15, 21, 23, 25, and 28 are redrawn; all other congressional districts as enacted by Chapter 2, Acts of the Texas Legislature, 3rd Called Session, 2003,


remain unchanged.

All relief not specifically granted is denied.

Signed this fourth day of August, 2006.

  
PATRICK E. HIGGINBOTHAM  
UNITED STATES CIRCUIT JUDGE

  
LEE H. ROSENTHAL  
UNITED STATES DISTRICT JUDGE

  
T. JOHN WARD  
UNITED STATES DISTRICT JUDGE